

AMENDED IN ASSEMBLY APRIL 13, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 998

Introduced by Assembly Member Wagner

February 26, 2015

An act to amend Section 48a of the Civil Code, relating to libel.

LEGISLATIVE COUNSEL'S DIGEST

AB 998, as amended, Wagner. Civil law: libel: damages.

Under existing law, in any action for damages for the publication of a libel in a newspaper or of a slander by a radio broadcast, the plaintiff is required to recover no more than special damages unless a correction is demanded and the correction is not published or broadcast. If a correction is demanded and the correction is not published or broadcast in a specified manner in the newspaper or on the broadcasting station, existing law authorizes the plaintiff to recover general, special, and exemplary damages provided certain requirements are met.

The bill would ~~expand these provisions to additionally include libel in a magazine or other periodical publication, either in print or electronic form~~ revise these provisions relating to libel to provide that the publication of a libel be in a daily news publication, as defined. This bill would also make legislative findings regarding libel.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 **SECTION 1.** *It is the intent of the Legislature to ensure that*
- 2 *online publications are afforded the same protection under Section*

1 48a of the Civil Code as is afforded to a printed newspaper to the
2 extent that the online publication performs the same
3 news-disseminating function as a printed newspaper. The
4 Legislature finds and declares that the rulings in *Burnett v.*
5 *National Enquirer, Inc.* (1983) 144 Cal.App.3d 991 and *Condit v.*
6 *National Enquirer, Inc.* (2002) 248 F.Supp.2d 945 correctly state
7 that the purpose of Section 48a of the Civil Code is to protect
8 enterprises engaged in the immediate dissemination of news on
9 matters of public concern, insofar as time does not reasonably
10 permit such enterprises to check sources for accuracy and stories
11 for inadvertent errors. It is not the intent of the Legislature that
12 Section 48a of the Civil Code should apply to periodicals that
13 publish at weekly or longer intervals, nor is it the intent of the
14 Legislature that Section 48a of the Civil Code should apply to
15 casual postings on a social networking Internet Web site, chat
16 room, electronic bulletin board, discussion group, online forum,
17 or other related Internet Web site.

18 **SECTION 1.**

19 SEC. 2. Section 48a of the Civil Code is amended to read:

20 48a. 1. In any action for damages for the publication of a libel
21 ~~in a newspaper, magazine, or other periodical publication, either~~
22 ~~in print or electronic form, daily news publication, or of a slander~~
23 by radio broadcast, plaintiff shall recover no more than special
24 damages unless a correction be demanded and be not published
25 or broadcast, as hereinafter provided. Plaintiff shall serve upon
26 the publisher, at the place of publication or broadcaster at the place
27 of broadcast, a written notice specifying the statements claimed
28 to be libelous and demanding that the same be corrected. Said
29 notice and demand must be served within 20 days after knowledge
30 of the publication or broadcast of the statements claimed to be
31 libelous.

32 2. If a correction be demanded within said period and be not
33 published or broadcast in substantially as conspicuous a manner
34 ~~in said newspaper, magazine, or other periodical publication, either~~
35 ~~in print or electronic form, daily news publication, or on said~~
36 broadcasting station as were the statements claimed to be libelous,
37 in a regular issue thereof published or broadcast within three weeks
38 after such service, plaintiff, if he pleads and proves such notice,
39 demand and failure to correct, and if his cause of action be
40 maintained, may recover general, special and exemplary damages;

1 provided that no exemplary damages may be recovered unless the
2 plaintiff shall prove that defendant made the publication or
3 broadcast with actual malice and then only in the discretion of the
4 court or jury, and actual malice shall not be inferred or presumed
5 from the publication or broadcast.

6 3. A correction published or broadcast in substantially as
7 conspicuous a manner in said ~~newspaper, magazine, or other~~
8 ~~periodical publication, either in print or electronic form, daily news~~
9 *publication*, or on said broadcasting station as the statements
10 claimed in the complaint to be libelous, prior to receipt of a demand
11 therefor, shall be of the same force and effect as though such
12 correction had been published or broadcast within three weeks
13 after a demand therefor.

14 4. As used herein, the terms “general damages,” “special
15 damages,” “exemplary damages” and “actual malice,” are defined
16 as follows:

17 (a) “General damages” are damages for loss of reputation,
18 shame, mortification and hurt feelings.

19 (b) “Special damages” are all damages which plaintiff alleges
20 and proves that he has suffered in respect to his property, business,
21 trade, profession or occupation, including such amounts of money
22 as the plaintiff alleges and proves he has expended as a result of
23 the alleged libel, and no other.

24 (c) “Exemplary damages” are damages which may in the
25 discretion of the court or jury be recovered in addition to general
26 and special damages for the sake of example and by way of
27 punishing a defendant who has made the publication or broadcast
28 with actual malice.

29 (d) “Actual malice” is that state of mind arising from hatred or
30 ill will toward the plaintiff; provided, however, that such a state
31 of mind occasioned by a good faith belief on the part of the
32 defendant in the truth of the libelous publication or broadcast at
33 the time it is published or broadcast shall not constitute actual
34 malice.

35 5. *For purposes of this section, a “daily news publication”*
36 *means a publication, either in print or electronic form, that*
37 *contains news on matters of public concern and that publishes at*
38 *least five days a week.*

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